

REMARKS

By the present amendment, Applicant has amended Claims 1 and 7. Claims 4 and 6 were cancelled and Claims 7-10 will be added by the previous amendment. Independent Claims 1 and 7, with Claims 2, 3, 5 and 8-10 depending therefrom, respectively, remain for consideration.

In the recent Office Action the Examiner rejected Claims 1-3, 5 and 7-10 under 35 U.S.C. § 103(a) as being unpatentable over Lubby (U.S. Patent No. 6,167,651) in view of Stroebel et al. (U.S. Patent No. 4,588,396), and further in view of Brown (U.S. Patent No. 5,615,516).

Applicant has amended independent Claims 1 and 7 to set forth that the bottom outlet of the water reservoir includes -- a threaded outer surface -- and that the upper end of the conduit includes -- a threaded coupler --. No new matter is involved by the present amendatory language since these features of Applicant's invention find express support in the original disclosure. Applicant will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

Applicant contends that the Luddy reference taken in combination with Stroebel et al. and Brown fail to reasonably suggest a tree watering system having the combination of structural and functional features as defined by the present claims. The patent to Luddy discloses a Christmas tree watering device that includes a unitary, molded spherical receptacle that resembles a Christmas tree ornament when in a closed position. The bottom portion of Luddy's receptacle is a half spherical reservoir with a top opening and a drain outlet centered in the bottom. A half spherical lid is hingedly connected along one edge to the half spherical reservoir and completely covers the top opening. The lid includes a molded structure such as a hook for removably attaching the device to a branch of a tree. A tube is frictionally connected to the drain outlet and extends to the base of the tree for transferring water from the reservoir to a tree stand. Luddy's device further includes means for maintaining the lid against the reservoir in a closed position. Clearly, Luddy's two-part receptacle having an opened reservoir is structurally distinct from Applicant's substantially closed container except for the bottom outlet. Also, Luddy's frictional connection between the tube and the outlet is different from Applicant's threaded connection as set forth by the present claims. These structural features of Applicant's invention result in operational advantages which are not achievable with the reference device. For instance, Luddy's device is used by lifting the lid and pouring water into the opening of the reservoir using a pitcher while the device remains attached to the tree. On the other hand, Applicant's water reservoir may be easily disconnected from the conduit and conveniently refilled remote from the tree. Also, the capacity of Applicant's water reservoir is substantially greater than

the half spherical reservoir of Luddy, which results in fewer times for refills. In addition there appears no mention in Luddy of Applicant's means for securing the lower end of the conduit to the tree trunk as called for by the present claims.

The Examiner asserts that it would have been obvious to one of ordinary skill in the art to modify the tree watering device of Luddy by using the water reservoir of Stroebel et al. and to add the strip of hoop and loop fastening material for securing the lower end of the conduit to the tree as taught by Brown. While Applicant concedes that it may be obvious to use the securing means of Brown in Luddy's device, Applicant strongly disagrees that one skilled in the art would likely be persuaded to combine the references of Luddy and Stroebel et al. in order to make the modification asserted by the Examiner. In this regard, the patent to Stroebel et al. describes an apparatus for dispensing liquids by gravity at predetermined rates which includes an inverted liquid supply bottle having an opening neck portion, a reservoir basin below the neck portion and a liquid supply passage between the bottle neck and the reservoir basin. An upper portion of the reservoir basin is open to the atmosphere and a delivery tube extends downwardly from the bottom of reservoir basin and conveys liquid to be dispensed from the bottom of the basin to a location for use. The flow of liquid in the delivery tube is manually controlled by a valve or by controlling the access of atmospheric air to the reservoir. The rate of delivery of the liquid is monitored by the use of a capillary tube dripping into a sight glass. There can be no question that the apparatus taught by Stroebel et al. is so structurally and functionally unrelated to the tree watering

device of Luddy that any assumption that one of ordinary skill in the art would likely be motivated to combine these references in the manner suggested by the Examiner is completely unfounded. Moreover, substituting the closed liquid supply bottle of Stroebel et al. for the openable spherical receptacle of Luddy, which is designed to provide an opening for pouring water therein and to resemble a Christmas tree ornament, would ultimately destroy essential features of Luddy's invention.

Applicant notes that obviousness cannot be shown by combining the teachings of the prior art unless there is some teaching or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984); *In re Geiger*, 815 F.2d at 688, 2 USPQ2d at 1278 (Fed. Cir. 1987). Further, the Federal Circuit in *In re Dembiczak*, 175 F.3rd 994, 50 USPQ2d 1614 (Fed.Cir. 1999) deprecated rejections based upon "a hindsight-based obviousness analysis" and emphasized that what is required is a "rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references." The Court said that "the showing must be clear and particular" and that broad conclusory statements regarding the teaching of multiple references and "a mere discussion of the ways that the multiple prior art references can be combined to read on the claimed invention" is inadequate. Absent an explicit suggestion or teaching of the combination in the prior art references, there must be "specific...findings concerning the identification of the relevant art, the level of ordinary skill

in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis".

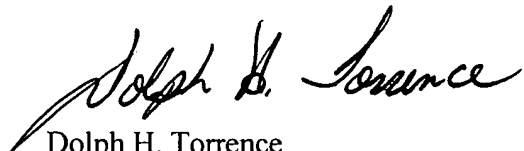
Applicant contends that one skilled in the art would not be motivated or guided by the prior art to combine the patents to Luddy and Stroebel et al. in the manner suggested by the Examiner since the devices taught by these references are so structurally and operationally unrelated from each other as to make such a combination highly impractical. Applicant further contends that the realistic teachings afforded by the non-analogous reference to Stroebel et al. or the Brown reference fail to supplement the above noted deficiency of the primary reference to Luddy with respect to the threaded connection. Thus, one of ordinary skill in the art without the benefit of Applicant's own disclosure would not be capable of arriving at the presently claimed invention by combining the references in the manner suggested by the Examiner. For at least these reasons, Applicant respectfully submits that independent Claims 1 and 7, as amended, and corresponding dependent Claims 2, 3, 5 and 8-10 allowable over the prior art of record.

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For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, reading "Dolph H. Torrence". The signature is fluid and cursive, with the first name "Dolph" being more prominent and the last name "Torrence" following in a similar style.

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Attachments: Petition for a One-Month Extension of Time
Check for \$60.00